No.48631-8-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

KENNETH SWANIGAN and CHARLIE WALKER III,

Appellants,

v.

MOST WORSHIPFUL PRINCE HALL GRAND LODGE FAM; and M.W.G.M. GREGORY D. WRAGGS, SR.,

Respondents.

BRIEF OF RESPONDENTS

James C. Fowler, WSBA #15560
Attorneys for Respondents

VANDEBERG JOHNSON & GANDARA, LLP
999 Third Avenue, Suite 3000
Seattle, Washington 98104-4088
Telephone: (206) 386-5904
Facsimile: (206) 464-0484

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

U.S. Constitutional Provisions

Statutes

Other Authorities

INTRODUCTION

This Court should affirm Judge Schwartz's dismissal of Appellants' Complaint for failure to state a claim upon which relief can be granted. The Argument section of this brief is separated into two parts. Part I of the Argument section lays out the facts and legal grounds for affirming Judge Schwartz. Judge Schwartz acted correctly because the two legal theories in Appellants' Complaint, the anti harassment statute (RCW 10.14) and Constitutional Due Process, are on their faces inapplicable, and also because the Complaint fails to identify any relief being sought by Appellants.

Part II of the Argument section briefly addresses each of the Assignments of Error and Issues pertaining to Assignments of Error in the same order in which they are identified in Appellants' Brief. This section is only included because Appellants' Appeal Brief is difficult to understand and does not track with the Assignments of Error or Issues Pertaining to Assignments of Error.

ASSIGNMENTS OF ERROR

Not applicable – Respondents do not contend the Trial Court erred.

STATEMENT OF FACTS

Appellants are suspended members of the Prince Hall Grand Lodge of Washington, a Masonic Grand Lodge ("the Grand Lodge"). The Respondents are the Grand Lodge and its current elected leader, or "Grand Master", Gregory Wraggs, Sr.. CP 36.

The Appellants' 22 page Complaint (CP 35-56) is difficult to understand, but generally contains redundant statements identifying the parties (CP 36-37), copious quotes from alleged Masonic authorities (CP 38-51), an apparent request to the Grievance and Appeals Committee of the Grand Lodge (not the Court) (CP 51), and a laundry list of quoted Masonic rules that Plaintiffs apparently contend were violated (CP 51-56).

The Complaint identifies two legal theories of recovery, the Anti Harassment statute, RCW 10.14.020 (CP 35, 36, 37), and "Substantive and Procedural Due Process of Law, which is guaranteed in The United States of America in the 14th Amendment" (CP 49).

The Complaint omits a "Prayer for Relief" or any itemization of the relief Appellants are seeking in this suit.

Appellants filed their Complaint on July 7, 2005. On that same day, Appellants filed a Motion for Preliminary Injunction (CP1-33) that, according to their Proposed Order (CP 28), sought an injunction that would have allowed Appellants to attend the Grand Lodge's 112th annual meeting to be held at Pasco, Washington on July 13-15, 2015. The Appellants attempted to obtain the injunction *ex parte*, without notice. Judge Hogan entered an order denying the motion without prejudice on July 7 (CP 34).

After July 7, nothing happened. There were no decisions by the Court until Respondents filed their Motion to Dismiss. Appellants never renewed their injunction motion and never filed any discovery motions. Respondents filed their Motion to Dismiss the Complaint on December 3

(CP 181-182).[1] In both their Motion and Reply (CP183-185), Respondents pointed out that Appellants had failed to identify either a colorable legal theory of recovery or other requested relief. Judge Schwartz granted the motion on December 11, 2015 (CP 118-119), and denied Appellants' subsequent Motion for Reconsideration (CP 176). This appeal followed.

ARGUMENT

PART I: THE TRIAL COURT PROPERLY GRANTED THE GRAND LODGE'S MOTION TO DISMISS

Judge Schwartz correctly dismissed this Complaint. Civil Rule 8(a) states in part that "a pleading which sets forth a claim for relief... shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader deems the pleader is entitled." Although the threshold for meeting Civil Rule 8 is not difficult, "Even our liberal rules of pleading require a complaint to contain direct allegations sufficient to give notice to the court and the opponent of the nature of the plaintiff's claim". *Berge v. Gorton*, 88 Wn.2d 756, 762, 567 P.2d 187 (1977) (dismissing Complaint for failure to state claim).

[1] Respondents have designated their Motion to Dismiss and Reply but not yet received notice of the CP numbers. Respondents assume the numbers will be 181-182 for the Motion and 183-185 for the Reply, but have attached copies of both (short) pleadings to this brief for the Court's convenience.

Appellants' Complaint fails to set forth either a "claim showing that the pleader is entitled to relief" or "a demand for judgment for the relief to which the pleader deems the pleader is entitled".

The two legal theories identified by Appellants in their Complaint are plainly inapplicable. RCW 10.14 is commonly referred to as the "anti stalking statute". *See, e.g., State v. Becklin*, 163 Wn.2d 519 (2008). RCW 10.14 applies when a plaintiff seeks to cut off unwanted contact from a defendant.

In this case, the Appellants have not stated a claim for being "harassed" by the Respondents within the meaning of RCW 10.14. In fact, Appellants' pleadings show that just the opposite is true. Appellants sought an injunction to force the Respondents to allow the Appellants to attend the Respondents' 2015 Annual Meeting (CP 28). In other words, the Appellants were seeking to force unwanted contact on the Respondents, not vice versa. Appellants are seeking to use RCW 10.14 to force the Respondents to have unwanted contact and an unwanted relationship. This is exactly opposite to the purpose of RCW 10.14. The Appellants do not understand RCW 10.14 and seem to be relying on a layman's generic definition of "harassment". Appellants have not stated a claim under RCW 10.14.

Appellants have also failed to state a claim for violation of Constitutional Due Process rights. The Due Process clauses of the Constitution are contained in the Fifth and Fourteenth Amendments to the Constitution, and only apply to actions by the federal (Fifth Amendment)

and state (Fourteenth Amendment) governments. *See, e.g., Garvey v. Seattle Tennis Club,* 60 Wn.App. 930, 935, 808 P.2d 1155 (1995), and citations therein. There is no federal or state action alleged or present in this case.

Appellants' Complaint also fails because it does not include a "demand for judgment for the relief to which the pleader deems the pleader is entitled" as required by CR 8. There is no "Prayer for Relief" or similar section in the Complaint. At the Trial Court, the Appellants argued that they identified a form of relief when they filed their *ex parte* motion for preliminary injunction. That argument failed for two reasons, however. First, the injunction motion did not cure the deficiencies in the Complaint. Second, the relief sought in Appellants' *ex parte* injunction motion was moot once the Annual Communication ended on July 15, 2015, long before the case was dismissed.

The Appellants' Appeal Brief fails to dispute, analyze or even mention any of these issues. The Complaint was dismissed for good reason. The fact that the Appellants are *pro se* does not help them. A *pro se* litigant is generally held to the same standard as an attorney. *Carver v. State of Washington,* 147 Wn.App. 567, 575 (2008) (noting exception for mentally disabled *pro se* plaintiff); *Batten v. Abrams,* 28 Wn.App. 737, 739 n. 1, 626 P.2d 984, *review denied,* 95 Wn.2d 1033 (1981). Appellants failed to meet the requirements of Rule 8 and their Complaint was properly dismissed.

PART II: RESPONSE TO ASSIGNMENTS OF ERROR, ISSUES PERTAINING TO ASSIGNMENTS OF ERROR, AND TABLE OF AUTHORITIES IN APPELLANTS' BRIEF

Appellants' Appeal Brief is difficult to understand and does not track with the Assignments of Error or Issues Pertaining to Assignments of Error. In order to ensure completeness, however, the following section briefly addresses each of Appellants' Assignments of Error and Issues Pertaining to Assignments of Error in the same order in which they are identified in Appellants' Brief.

Appellants' Assignments of Error

Assignment A. The Trial Court did not grant summary judgment, it granted a motion to dismiss for the valid reasons set forth above. We will not repeat those reasons here.

Assignment B. The Respondents responded to the Appellants' Complaint by filing their Motion to Dismiss. Since the Motion was granted, no further response was required.

Assignment D (there is no Assignment C). There was no reversible error by the Trial Court in denying Appellants' *ex parte* request for a preliminary injunction. Whether to grant a preliminary injunction is a discretionary decision for the Trial Court. *See, e.g., Alderwood Assocs. v. Washington Environmental Council*, 96 Wn.2d 230, 635 P.2d 108 (1981). Appellants' Appeal Brief fails to show or even argue that the Trial Court's decision to deny their *ex parte* motion was an abuse of discretion. Moreover, it was not an abuse of discretion as the Appellants' attempt to obtain *ex parte* relief without notice very clearly violated Civil Rule 65.

In addition, any issue regarding the preliminary injunction motion has long been moot since the annual meeting ended on July 15, 2015.

The second portion of Assignment D, relating to "Appellants' Request for Discovery filed on July 28, 2015" does not contain any reviewable issue. Appellants never filed a motion to compel or similar motion. There is no Trial Court decision to review.

Assignment E. Again, there is no reviewable issue with regard to discovery because no motion to compel or issue regarding discovery was ever put before the Trial Court.

Assignment G (there is no Assignment F). There is no conceivable basis for arguing that Appellants' Due Process rights were violated by assigning this case to Judge Schwartz. If Appellants felt that Judge Schwartz was biased against them they should have filed an Affidavit of Prejudice pursuant to RCW 4.12. They decided not to do so. They cannot complain after the fact, and there is no evidence anywhere of any bias by Judge Schwartz.

Assignment H. This issue was not raised in any defined legal theory in the Complaint, and is irrelevant to whether Appellants stated a claim under RCW 10.14 or the Due Process clauses of the Constitution.

Assignment I. Appellants did not file any Declarations in response to the Motion to Dismiss, and it is not clear what "Declaration Statements" are being referenced in this Assignment. Appellants present no argument in support of this Assignment but we note, again, that this

was a Motion to Dismiss for failure to state a claim, not a summary judgment motion and no declarations were involved.

Issues pertaining to Appellants' Assignments of Error

Issues 1, 2 and 3. All of these issues pertain to discovery. Again, there is no reviewable issue with regard to discovery because no motion to compel or other motion regarding discovery was ever put before the trial court.

Issue 4. Respondents did respond to the Complaint with the Motion to Dismiss.

Issue 5. Again, RCW 10.14 has no application to this situation for the reasons stated above.

Appellants' Table of Authorities

Appellants cite a number of very old cases in their Table of Authorities, but never mention any of the cases in their Brief. It appears that the Appellants just performed a computer search to identify cases involving Masons and then listed the cases. Counsel for the Grand Lodge could not locate the two cases from the 1800's, *Woolfork's Appeal*, 126 Pa. St. 47 (1889) and *Smith v. Smith,* 2 Desaus 557 (1813), but the other cases are wholly unrelated to RCW 10.14, Due Process, the sufficiency of a Complaint under CR 8 , or the issues in this case.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court affirm the Trial Court's decision.

RESPECTFULLY SUBMITTED this 29th day of ~~July~~ June, 2016.

VANDEBERG JOHNSON &
GANDARA, LLP

By _____
James C. Fowler, WSBA #15560
Attorneys for Respondents

999 Third Avenue, Suite 3000
Seattle, Washington 98104-4088
Telephone: (206) 386-5904
Facsimile: (206) 464-0484

I hereby declare under penalty of perjury under the laws of the State of Washington, that the following is true and correct. On this day, I caused to be delivered true and correct copies of Brief of Respondents by U.S. Mail, postage prepaid, on Appellants as follows.

Kenneth Swanigan
Charlie Walker, III
PO Box 2204
Renton, WA 98056

Kenneth Swanigan
559 Union Avenue NE
Renton, WA 98055

Charlie Walker, III
4733 West Bertona St.
Seattle, WA 98199

SIGNED this 29th day of June, 2016, at Seattle, Washington.

Lorraine Lofton

The Honorable Vicki L. Hogan

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

KENNETH SWANIGAN and CHARLIE WALKER, III, Past Grand Masters, Plaintiffs, v. MOST WORSHIPFUL PRINCE HALL GRAND LODGE F.A.M. WASHINGTON & JURISDICTION and MOST WORSHIPFUL GRAND MASTER GREGORY D. WRAGGS, SR., Defendants.	No. 15-2-09953-7 MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

Defendants request that the Court dismiss the Plaintiff's Complaint because it fails to state a claim for which relief can be granted. Civil Rule 8(a) states in part that "a pleading which sets forth a claim for relief... shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader deems the pleader is entitled."

The "Complaint" filed by the plaintiffs in this case is a mishmash of quotes from alleged Masonic authorities, and, on page 17, appears to be a request to the Grievance and Appeals Committee of the defendant Masonic Grand Lodge, not a request to the Court. The last five pages of the Complaint are apparently a laundry list of Masonic rules that Plaintiffs contend were violated.

VANDEBERG JOHNSON & GANDARA, LLP
ATTORNEYS AT LAW
999 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98104-4088
(206) 464-0404 (SEATTLE)
FACSIMILE (206) 464-0484

The Plaintiffs never allege any legal theory under which they are proceeding, and never identify any legal form of relief being sought from the Court. The Complaint fails to state a legally cognizable claim and should be dismissed. See, e.g., *Berge v. Gorton*, 88 Wn.2d 756, 762, 567 P.2d 187 (1977) (stating "Even our liberal rules of pleading require a complaint to contain direct allegations sufficient to give notice to the court and the opponent of the nature of the plaintiff's claim" and dismissing Complaint for failure to state claim).

Finally, Defendants wish to make clear that they consider this suit to be frivolous and will seek their fees as a result unless the plaintiffs voluntarily dismiss this Complaint at this time. The Plaintiffs have personal knowledge of and involvement in several similar suits that were dismissed on summary judgment. The Plaintiffs have no excuse for not realizing that their sole remedy for any complaints they are alleging about their membership in the Grand Lodge lies in the internal appeal process of the Grand Lodge, not in civil Courts. Defendants are including this statement in this pleading so that Plaintiffs cannot dispute that they had fair warning of this issue in the future.

DATED this 1st day of December, 2015.

VANDEBERG JOHNSON & GANDARA, LLP

By _____
James C. Fowler, WSBA #15560
Attorneys for Defendants

VANDEBERG JOHNSON & GANDARA, LLP
ATTORNEYS AT LAW
999 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98104-4088
(206) 464-0404 (SEATTLE)
FACSIMILE (206) 464-0484

The Honorable Vicki L. Hogan
Hearing Date: December 11, 2015 9:00 a.m.

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

KENNETH SWANIGAN and CHARLIE WALKER, III, Past Grand Masters, Plaintiffs, v. MOST WORSHIPFUL PRINCE HALL GRAND LODGE F.A.M. WASHINGTON & JURISDICTION and MOST WORSHIPFUL GRAND MASTER GREGORY D. WRAGGS, SR., Defendants.	No. 15-2-09953-7 REPLY BRIEF IN SUPPORT OF MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM

1. Introduction.

Defendants' Motion to Dismiss should be granted. Plaintiffs' Complaint fails to set forth either a "claim showing that the pleader is entitled to relief" or "a demand for judgment for the relief to which the pleader deems the pleader is entitled" as is required by CR 8. Plaintiffs' Objection to this Motion is largely irrelevant to these issues. To the extent, however, that Plaintiffs contend that they have satisfied CR 8 they are simply incorrect.

2. Plaintiffs Have Failed To Identify Any Colorable Legal Theory Of Recovery.

Plaintiffs seem to argue that their Complaint identifies two legal theories of recovery, the anti harassment statute (RCW 10.14) and Constitutional due process. Plaintiffs' Complaint fails to state a colorable claim under either theory. RCW 10.14 is commonly referred to as the "anti stalking statute". See, e.g., *State v. Becklin*, 163 Wn.2d 519 (2008). RCW 10.14 applies when a

VANDEBERG JOHNSON & GANDARA, LLP
ATTORNEYS AT LAW
999 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98104-4088
(206) 464-0404 (SEATTLE)
FACSIMILE (206) 464-0484

plaintiff seeks to prevent contact with a Defendant. RCW 10.14 has no conceivable application in this case. In this case, Plaintiffs are seeking more contact with Defendants. The Defendants suspended Plaintiffs from the Defendants' club. The Defendants want to be rid of the Plaintiffs. The Plaintiffs apparently do not want to leave. The Plaintiffs cannot claim they are being "stalked" or harassed within the meaning of RCW 10.14 when the Plaintiffs are seeking to maintain a relationship with the Defendants. It appears that the Plaintiffs do not understand RCW 10.14 and are merely relying on a generic layman's definition of "harassment". Whatever their reasoning, Plaintiffs have not stated a claim under RCW 10.14.

Plaintiffs have also failed to state a claim for violation of Constitutional Due Process rights. The Due Process clauses of the Constitution are contained in the Fifth and Fourteenth Amendments to the Constitution, and only apply to actions by the Federal (Fifth Amendment) and State (Fourteenth Amendment) governments. There is no state action alleged or present in this case.

3. Plaintiffs Have Failed To Identify Any Relief Being Sought.

Plaintiffs' Complaint also fails to include a "Prayer for Relief" or any itemization of the relief they are seeking in this suit. In their Objection to this Motion, Plaintiffs do not dispute that the Complaint fails in this regard. Instead, Plaintiffs argue that they identified a form of relief when they previously filed an ex parte motion for preliminary injunction in which they sought admission to the 2015 Grand Lodge Annual Communication (The Annual Communication is the annual meeting of all Grand Lodge members). This argument fails for two reasons. First, the injunction motion does not cure the deficiencies in the Complaint. Second, the issue in Plaintiffs' ex parte injunction motion is long moot. The Annual Communication meeting ended five months ago.

4. Conclusion.

A *pro se* litigant is generally held to the same standard as an attorney. *Carver v. State of Washington,* 147 Wn.App. 567, 575 (noting exception for mentally disabled *pro se* plaintiff);

VANDEBERG JOHNSON & GANDARA, LLP
ATTORNEYS AT LAW
999 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98104-4088
(206) 464-0404 (SEATTLE)
FACSIMILE (206) 464-0484

Batten v. Abrams, 28 Wn.App. 737, 739 n. 1, 626 P.2d 984, *review denied,* 95 Wn.2d 1033 (1981). The Defendants should not have to waste time and money guessing at Plaintiffs' theories. Plaintiffs have failed to meet the requirements of Rule 8 and their Complaint should be dismissed.

DATED this 21st day of December, 2015.

VANDEBERG JOHNSON & GANDARA, LLP

By _____
James C. Fowler, WSBA #15560
Attorneys for Defendants

VANDEBERG JOHNSON & GANDARA, LLP
ATTORNEYS AT LAW
999 THIRD AVENUE, SUITE 3000
SEATTLE, WASHINGTON 98104-4088
(206) 464-0404 (SEATTLE)
FACSIMILE (206) 464-0484